

**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

D.T.E. NO. 01-31 – Phase II (Track A)

REQUEST: Department of Telecommunications and Energy Requests to AT&T Communications of New England, Inc.

DATE: September 19, 2002

DTE-ATT 2-1: If Special Access rates are reduced to UNE levels, would AT&T still maintain its position that some retail business services are not contestable? If so, why?

Respondent: Eileen Halloran and Deborah Waldbaum

RESPONSE: While requiring Verizon to reduce intrastate special access rates to UNE levels is an important move in the right direction, it will not, by itself, allow CLECs to contest many retail business services. The response below describes why this is the case. The response also establishes that the best and most effective way to promote retail contestability is to require Verizon to provision its wholesale orders from CLECs as UNEs, when the components ordered are used to compete with Verizon's retail services, and not as special access. However, because the Department's question arises in the context of special access, we will address that issue first.

As we will demonstrate below, under Verizon's current special access provisioning policies, its competitors cannot purchase intrastate special access circuits in most cases. Therefore, only altering the price of such circuits would be of little competitive significance. Without further Department action to prohibit Verizon from discriminatorily imposing restrictions on the purchase and use of intrastate circuits, Verizon will continue to enjoy significant price and performance advantages that so tilt the competitive field as to make real competitive pressure on Verizon's retail rates impossible. Alternatively, the Department can ensure contestability of retail services by prohibiting Verizon from denying access to UNEs when the components sought by CLECs are used to provide services that compete with Verizon's retail business services offered under state tariff.

## **Overview.**

Even after Verizon complies with the Department's order to reduce intrastate special access rates to UNE levels, Verizon will continue to maintain a significant unfair competitive advantage by its discriminatory application of jurisdictional rules. Specifically, under Verizon's current policies, CLECs will not be able to purchase special access circuits under state tariff even though such circuits will carry the same traffic and services as the circuits Verizon provisions to its retail customers under its retail state tariff.

More specifically, when Verizon provides business services to its retail customers, it provides the special circuit pursuant to state tariff which is subject to Department jurisdiction. Yet, Verizon's current wholesale policies force CLECs to purchase the identical circuit for the identical use solely out of Verizon's interstate special access tariffs. These circuits are sold out of Verizon's interstate tariffs at inflated prices that the Department cannot directly reduce (as it proposes here to reduce intrastate access charges rates) and under discriminatory conditions that the Department cannot monitor or correct. Hence, Verizon's discriminatory application of jurisdictional rules mask and justify discriminatory and anticompetitive pricing, service provisioning and use restrictions. Absent additional action by the Department here, they will continue to do so notwithstanding the Department's requirement to reduce intrastate special access rates to UNE levels.

In order for retail business services to be contestable, therefore, the Department must address not only Verizon's inflated prices for intrastate access circuits; it must establish rules that make those circuits available for use on reasonable and non-discriminatory terms. Put simply, it has no competitive effect to compel Verizon to set a cost-based rate for intrastate special access circuits if Verizon can avoid selling such circuits to its competitors. However, if Verizon is required to apply to CLECs the same policies it applies to its own end-users for determining jurisdiction of special circuits, then CLECs will be able to purchase the vast majority of special circuits under state tariff and thus obtain the reduced wholesale input charges that the Department intends. Moreover, the following additional conditions must obtain to complete the conditions necessary for effective competition:

- (i) Verizon must be subject to a special access performance assurance plan to ensure that Verizon provisions and maintains intrastate special access circuits for competitors at the same performance levels that it does for its own end-users; and

(ii) Verizon must be prohibited from imposing upon CLECs restrictions on the use of special circuits and associated facilities that Verizon does not apply to itself when serving retail customers.

Alternatively, the Department can achieve contestability of retail services another and more direct way. The simplest and most effective means for ensuring that Verizon's competitors obtain connectivity, *i.e.*, the circuit necessary to gain access to the customer's premises ("connectivity"), on the same terms and conditions as Verizon is to treat them as unbundled network elements under the Telecommunications Act of 1996. Such treatment is appropriate and consistent with the pro-competitive intent of the 1996 Act, *when Verizon's competitors are using the connectivity to contest Verizon's retail services*. Defining this connectivity as "special access" circuits under a pre-existing regulatory regime gives rise to a host of jurisdictional and regulatory problems. Defining the connectivity as UNEs is the most direct way for the Department to exercise jurisdiction over the wholesale inputs, the terms and conditions of which are essential to the development of retail competition.

In the sections below, we provide a detailed discussion of the above points.

**If The Department Reduces Intrastate Special Access Rates To UNE Levels Without Taking Further Steps, Verizon's Discriminatory Application Of An FCC Rule Would Prevent CLECs From Obtaining The Department Ordered Rate Reductions For The Vast Majority Of Special Access Circuits That CLECs Use To Provide Competing Business Services.**

Virtually all access circuits provisioned at wholesale to telecommunications carriers are provisioned pursuant to federal tariff. As Verizon stated in D.T.E. 01-34, in response to a Department information request, an astonishing 99.4% of special access orders during the period April 1, 2000, through March 31, 2001, were provisioned under federal tariff. (See copy of DTE-VZ-2-1, attached hereto as Attachment A.) More to the point, under Verizon's discriminatory policies, a substantial majority of special access circuits would continue to be provisioned under interstate tariff even after reduction of intrastate special access rates to UNE levels, despite a CLEC desire to obtain such circuits under state tariff. The vast majority of circuits would continue to be provisioned under interstate tariff because Verizon does not permit CLECs to order out of the intrastate tariff unless they state that 0% of the expected traffic over the circuit will be interstate.<sup>1</sup> Verizon's refusal to sell intrastate circuits

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<sup>1</sup> CLECs must fill out an Access Service Request ("ASR") electronically to order a special circuit. On the ASR, there is a blank for percent interstate. Verizon's systems will not accept the order unless the CLEC fills in  
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unless the circuits are used exclusively for intrastate traffic is not required by or, we submit, permitted by, either federal law or the law of the Commonwealth.

In striking contrast to the conditions it applies that prevent wholesale customers from purchasing intrastate special access services even when they want to, Verizon determines usage, and thus jurisdiction, for circuits provisioned to its retail customers in an entirely different way -- a way that allows Verizon to provision *intra and interstate* service to its own customers on special circuits offered under the *intrastate* tariff. Verizon apparently takes the position that it can provide the circuit pursuant to state tariff because the circuit is used to provide *some* intrastate service, even though it is also used to carry interstate traffic, and even though Verizon acknowledges that it does not know and does not investigate whether and how much of the traffic on the circuit is intrastate and how much is interstate. For example, Verizon states that, because the traffic hits its local switch and Verizon does not know where the traffic goes after that, the circuit can be provisioned under state tariff.<sup>2</sup> Moreover, Verizon is careful not to document any conversation that it has with its customer regarding the intended use of the circuit, if indeed there is such a conversation at all.<sup>3</sup>

Verizon's justification and its reasoning, of course, would apply equally to a CLEC using a circuit to reach the end user. Yet, under Verizon's existing policies, a CLEC would not be permitted to purchase intrastate circuits on the same basis as Verizon provides for its retail customers.

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either 100% or 0%. Verizon's witnesses in D.T.E. 01-34 agreed that Verizon's systems work in this fashion. *See*, D.T.E. 01-34, Tr. Vol. 1, at 75-76 (Holland) (included in Attachment B to this response).

<sup>2</sup> In D.T.E. 01-34, Verizon witnesses stated that Verizon doesn't know what kinds of calls its customers make. Tr. Vol. 1, at 70-71 (Attachment B).

<sup>3</sup> In D.T.E. 01-34, Verizon witnesses at times claimed that it asked its customers about intended usage when the circuit is ordered. D.T.E. 01-34, Tr. Vol. 1, at 76 (Attachment B). Verizon's claim that it asked about intended usage, however, was not convincing, because (1) the person responsible for supervising the provision of retail service did not even know whether there are methods and procedures for obtaining intended use information, (2) Verizon does not have any methods and procedures for obtaining that information, and (3) Verizon does not maintain any record of the information provided by the customer regarding intended usage. D.T.E. 01-34, Tr. Vol. 1, at 76-79 (Attachment B), and Verizon's response to RR-ATT-VZ 1-1 in D.T.E. 01-34 (attached hereto as Attachment C). Put bluntly, Verizon has no method for documenting expected usage and has no documentation that it even sought such information.

Verizon's policies discriminatorily force its competitors to purchase circuits for intrastate and interstate service under the *interstate* tariff, even if they would prefer to purchase out of the state tariff. Hence, any change in the price of special access rates under state tariff will not affect the prices that competing carriers must pay for the vast majority of their special access circuits under current Verizon policies because, put quite simply, Verizon will not make them available to CLECs for purchase.<sup>4</sup> Moreover, any change in rates for intrastate special access circuits will not end Verizon's discriminatory and anticompetitive *performance* in the provisioning and maintenance of either interstate or intrastate special access circuits.<sup>5</sup> By applying different standards for determining jurisdiction of the underlying circuit used to provide competing business services, Verizon effectively deprives the Department of jurisdiction to ensure competitive parity for the promotion of retail competition. In order for the Department's reduction of intrastate special access rates to have a competitive effect, therefore, the Department must prohibit Verizon's discriminatory application of the jurisdiction rules, and subject wholesale circuits to the Department's jurisdiction whenever a Verizon retail circuit with comparable usage would be within that same jurisdiction.

In sum, Verizon provisions its business services, including the connectivity between the end-user and Verizon's network, pursuant to its local, *state tariff*. When AT&T provisions the same business services, the portion of the AT&T service that constitutes connectivity between the end-user and the AT&T network must be purchased from Verizon under *federal tariff*.<sup>6</sup> Rates under the federal tariff are substantially higher than the TELRIC based rates that the Department has ordered for intrastate special access circuits. Thus, Verizon's federally tariffed wholesale prices

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<sup>4</sup> We do not mean to imply that, even under Verizon's policies, carriers may not change their special access purchasing decisions if Verizon lowers its intrastate special access rates to UNE levels as required by the Department's Phase I Order in this docket. There may be some circuits that can satisfy Verizon's system requirement of 0% interstate traffic. If Verizon lowers its intrastate special access rates as required by the Department, AT&T will certainly investigate the extent to which it can order special access out of the state tariff to provide at least some of its business services.

<sup>5</sup> As explained by Ms. Halloran in D.T.E. 01-34, Verizon's own data demonstrate large disparities in provisioning and maintenance performance when comparing Verizon's performance for its retail customers to its wholesale performance for its competitors. For example, from January 2001 through March 2002, Verizon timely delivered circuits to its retail customers 99.16% of the time, while Verizon met the due date for wholesale carrier customers only 85.89% of the time. See D.T.E. 01-34, Halloran Surrebuttal, at 13 (with updates provided at Tr. Vol 3, at 369-371).

<sup>6</sup> As we have explained, Verizon's use and commingling restrictions, and its "no facilities-no build" policy drive CLECs to purchase special access circuits, and the FCC's "10% rule" combined with Verizon's policies would force CLECs to purchase many of those circuits under federal tariff, even after intrastate rates are reduced to UNE levels pursuant to the Department's order.

contribute to the rates that AT&T must charge at retail. This permits Verizon to price squeeze its wholesale customer/competitors by maintaining high prices for inputs needed by CLECs to compete with Verizon's retail services offered under state tariff.<sup>7</sup>

It is important to understand that the circuit over which business services are carried (*i.e.*, the "pipe" that runs between the end-user and the carrier) is the same whether the "pipe" is running to a Verizon network location or to an AT&T network location.<sup>8</sup> At the hearings in D.T.E. 01-34, Ms. Halloran provided a schematic diagram, marked in that case as AT&T Exhibit 9, that showed how bundled intra and interstate services are provided by Verizon and AT&T, respectively. (*See* diagram attached hereto as Attachment D, and Ms. Halloran's explanation, at D.T.E. 01-34 Tr. Vol. 3, at 432-434, attached hereto as Attachment E.) The adverse competitive consequences flow from the fact that when the "pipe" is ordered to connect to an AT&T network location, it is ordered out of the federal tariff due to Verizon's policies and its method for applying the FCC's 10% Rule. In contrast, when Verizon provisions a retail circuit to connect to a Verizon network location *to carry the same traffic with the same usage characteristics*, Verizon allows that circuit to be provisioned out of the state tariff.

The same jurisdictional rules should apply to both AT&T and Verizon when we are providing the same service to end-users. However, it is clear from data submitted by Verizon in D.T.E. 01-34 that Verizon applies a different standard for determining whether a circuit should be provisioned under state or federal tariff from the standard that its policies force AT&T to apply. As noted above, more than 99% of all Verizon special access circuits purchased by carriers at wholesale were provisioned out of Verizon's interstate tariffs. In contrast, according to data submitted by Verizon, not a single special circuit provisioned to its retail customers for purposes of connecting to a Verizon network location was provisioned under federal tariff. *See* "Mass. Retail Specials", "Non-Access" in D.T.E. 01-34, DTE-VZ 5-1 updating WCOM/ATT-VZ 1-3 (circuits completed), a copy of which is attached hereto as Attachment F. The record shows clearly that Verizon uses such intrastate circuits to offer retail services comparable to and directly competitive with the retail services that its

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<sup>7</sup> Where Verizon does not lower its retail prices sufficiently to place a price squeeze on its competitors, it is maintaining higher retail prices that include the profits from the inflated special access rates it is charging under federal tariff. As AT&T Witness, John Mayo, explained, retail prices that include above cost access charges include supra-competitive profits. *See* D.T.E. 01-31 (Phase I), Mayo Rebuttal, at 41-42.

<sup>8</sup> More accurately, we are not even talking about a physically separate "pipe." Rather, we are talking about a share of capacity on Verizon's existing IOF network, combined with a connection from that IOF network to the customer location.

competitors can offer only by purchase of interstate circuits.<sup>9</sup> Moreover, as we stated above, Verizon's witnesses in D.T.E. 01-34 were unaware of Verizon's methods to determine the use of the circuit for jurisdictional purposes, and could produce no evidence indicating that Verizon actually considers the use of the circuit in deciding the appropriate tariff.

Verizon's discriminatory application of jurisdiction rules for special access circuits deprives the Department of jurisdiction over not only the *rates* that Verizon's competitors pay for special access, but also the *performance* that they receive from Verizon in the provisioning and maintenance of special access circuits. Indeed, in D.T.E. 01-34, Verizon's position has been that the Department has no jurisdiction to establish a performance assurance plan for special access circuits provisioned under federal tariff. *See* Order on AT&T Motion to Expand Investigation, D.T.E. 01-34 (August 9, 2001), at 5 (citing Verizon's Comments at 7). Moreover, notwithstanding AT&T's view to the contrary, the Department agreed. *See id.*, at 11.

Thus, as the situation currently stands, Verizon's discriminatory application of jurisdictional rules will allow it to circumvent the procompetitive effects of the Department's order that Verizon sell intrastate special access circuits to its competitors at UNE rates. Verizon's policies will force AT&T and other CLECs to order out of a tariff over which the Massachusetts Department does not have jurisdiction, so that Verizon can enjoy a competitive advantage in retail services that are, in fact, subject to state jurisdiction.

The bottom-line is that, even if Verizon were to comply with the Department order to reduce its intrastate special access rates to UNE levels, retail services will not be contestable because AT&T and other CLECs will be prevented by Verizon from buying services out of this tariff. Instead they will still be forced to buy special access circuits at inflated prices out of the interstate tariffs. And, just as important, the reduction of prices on intrastate special circuits will do nothing to prevent Verizon's discriminatory practices in the provisioning and maintenance of intrastate and interstate special circuits.

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<sup>9</sup> Verizon's witnesses in D.T.E. 01-34 confirmed this. *See* D.T.E. 01-34, Tr. Vol. 1, at 70-71. For example, Verizon offers Flexpath under state tariff. Flexpath is a switched service that includes the ability to make long distance calls. Tr. Vol. 2, at 192-193 (Holland) (attached as Attachment G). It is a "special service" because the circuit is "designed." It is therefore included in DTE-VZ 5-1 under non-access Mass. Retail Specials. *See* DTE-VZ 5-1 in D.T.E. 01-34, attached hereto as Attachment F.

**AT&T Could Agree That Some Services Are Contestable, If The Department Were To Take Certain Steps.**

The Department has available to it two different approaches for causing Verizon to offer wholesale inputs to its competitors on terms and conditions and at prices that would make business services contestable. If the Department were to take either one of these two approaches, then AT&T could agree that certain retail business services are contestable.

**1. The Department Could Require Verizon To Provide Intrastate Special Access Circuits To Its Competitors On The Same Terms and Conditions And At The Same Prices As Verizon Provides Intrastate Special Circuits To Its End-Users.**

As we discussed above, Verizon currently has different standards for determining when an *end-user* may obtain a special circuit under state tariff and when a *competitor* may obtain a special access circuit under state tariff. Verizon has no evidence that it even considers intended usage for circuits when it provisions them to end-users under state tariff. Apart from conclusory statements made by Verizon witnesses at a hearing, there is nothing to indicate that Verizon even asks its end-users what the intended usage will be for circuits provisioned under state tariff. Indeed, Verizon has no methods and procedures or other guidelines for ensuring that its sales persons or customer reps ask about intended usage, nor does it record or document the customer's response. See D.T.E. 01-34, Tr. Vol. 1, at 76-79 (Cannell) (Attachment B). Verizon witnesses have said that Verizon simply has no idea what the usage is. D.T.E. 01-34, Tr. Vol. 1, at 70-71 (Holland) (Attachment B). Thus, on the basis of no recorded information on usage, Verizon automatically provisions circuits to its end users under state tariff.

*By contrast, when a competing telecommunications carrier orders a circuit to provide exactly the same service to the end-user, the competitor must specify that the expected usage on the circuit will be either 100% or 0% interstate.*

If the Department were to require Verizon to apply the same standards for allowing CLEC purchase of intrastate special access circuits as it does for allowing end-user purchase of intrastate special circuits, then CLECs would be able to purchase many more circuits under the state tariff, and the Department's reduction of intrastate charges to UNE levels would have the intended effect of reducing in a majority of cases the price of wholesale inputs to the TELRIC cost that Verizon incurs for the same inputs.

Allowing CLECs to use intrastate circuits at UNE rates in the same situations where Verizon uses intrastate circuits is not, however, sufficient



to ensure that the retail services for which the circuits are used are contestable. Verizon's *performance* in the provisioning and maintenance of circuits provided to CLECs must be comparable to its performance when provisioning and maintaining the circuits to its end-user customers. As we discussed above, the data provided by Verizon in D.T.E. 01-34 demonstrate that currently Verizon discriminates against its wholesale customers in the provisioning and maintenance of special circuits. The Department would, therefore, need to establish a performance assurance plan with self-enforcing penalties to ensure that Verizon's provisioning and maintenance performance is not discriminatory.

Finally, in order for retail services provided over special circuits to be fully contestable, the Department would also need to establish a clear rule prohibiting Verizon from imposing restrictions on the use of special circuits and facilities that Verizon does not apply to itself. For example, Verizon must be prohibited from imposing use and commingling restrictions that prevent CLECs from combining inter and intrastate services on the same facilities, when Verizon is able to combine such services on its circuits and facilities in order to optimize the efficiency of its network. Such restrictions have no economic or technical justification and force CLECs to order redundant circuits and facilities to do the same job that Verizon can do with far less investment.

To summarize, in order for retail services provided over special access circuits to be contestable, the following conditions must obtain:

- a. Verizon must price intrastate special access circuits at UNE levels;
- b. Verizon must apply the same standards for allowing CLEC purchase of intrastate special access circuits as it does for allowing its Retail operations to provision services using intrastate special circuits;
- c. Verizon must be subject to a special access performance assurance plan to ensure that Verizon provisions and maintains special access circuits for competitors at the same level that it does for its own end-users; and
- d. Verizon must be prohibited from imposing restrictions on the use of special circuits and facilities that Verizon does not apply to itself when serving retail customers.

**2. The Department Could Require Verizon To Provide Unbundled Network Elements To Its Competitors When Competitors Are Seeking To Contest Verizon's Retail Business Services.**

Under Verizon's use and commingling restrictions now in place, Verizon's competitors cannot use UNEs to contest any Verizon business

service provisioned on a DS1 or above circuit.<sup>10</sup> The simplest and most effective means for ensuring that Verizon's competitors obtain network facilities on the same terms and conditions as Verizon is to remove those use and commingling restrictions. If that is done, then the underlying facilities can be purchased as unbundled network elements under the Telecommunications Act of 1996, and need not be purchased as "special access" circuits under a pre-existing regulatory regime. At a minimum, those restrictions should be removed *when Verizon's competitors are using the facilities to contest Verizon's retail services*. Moreover, Verizon's other technique for forcing CLECs to purchase special access circuits instead of UNEs (*i.e.*, its "no facilities-no build" policy)<sup>11</sup> must also be prohibited.<sup>12</sup> Finally, the Department would need to provide for appropriate transition mechanisms. Such mechanisms would allow for an inexpensive (*e.g.*, "records only") process for converting existing special access circuits to UNEs and relief from term and volume penalties in existing Optional Payment Plans ("OPPs").

The Department has already recognized that the treatment of wholesale inputs in a "special access" regulatory environment is an artifact of a regulatory regime that predates the Telecommunications Act of 1996. Phase I Order, at 63-63. Moreover, it recognized that the treatment of wholesale inputs as "special access" is incompatible with efficient competition at the retail level. *Id.* The economic reasoning reflected in the Phase I Order is sound and unassailable: efficient competition at the retail level requires that Verizon's retail competitors have access to connectivity on the same terms and conditions as Verizon. When Verizon provides business services to retail customers, it incurs only the incremental cost of the network facilities necessary to serve the customer. Verizon's competitors cannot compete efficiently if Verizon charges them a greater cost. Moreover, when Verizon provides business services to its retail customers, it takes advantage of the provisioning processes it has developed for its own use. Verizon's retail competitors cannot compete efficiently with Verizon unless Verizon provisions for them on terms that are comparable.

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<sup>10</sup> This issue is explained at length by Ms. Waldbaum in her Phase I testimony, and further detailed in AT&T's response to the Department's information request DTE-ATT-1-1 (D.T.E. 01-31 (Phase II)).

<sup>11</sup> The impact of this issue on contestability is explained in AT&T's response to DTE-ATT 1-1 (D.T.E. 01-31 (Phase II)).

<sup>12</sup> Only last week, the New York Public Service Commission ("NYPSC") opened an investigation into Verizon's unilateral implementation of its "no facilities-no build" policy." See the September 25, 2002, NYPSC Order Instituting Proceeding, attached hereto as Attachment H. AT&T recommends that, in order to avoid duplicate effort, the Department monitor the NYPSC proceeding and, if appropriate for Massachusetts, adopt its results.

As we said above, the simplest and most effective means for ensuring that Verizon's competitors obtain connectivity on the same terms and conditions as Verizon for purposes of competition is to treat them as unbundled network elements under the Telecommunications Act of 1996, not as "special access" circuits under a pre-existing regulatory regime. Indeed, that is the fair and logical result of the record in Phase I: In its Massachusetts Competitive Profile ("MCP") Verizon relied on lines provisioned over special access circuits as evidence of "local exchange competition" and obtained pricing flexibility on that basis. If such lines are to be considered local exchange competition for purposes of granting Verizon pricing flexibility, then such lines should be considered local exchange lines for purposes of UNE pricing.

In her Phase I testimony, Ms. Waldbaum explained in detail why the so-called "safe harbors" necessary to avoid Verizon use restrictions cannot be satisfied given current network capabilities. The Department can, however, create "safe harbors" that can – as a practical, technological, and administrative matter – be satisfied, so that CLEC can purchase UNEs in order to offer retail business services that compete with Verizon's services. For example, the New York Public Service Commission ("NYPSC") has done just that. In New York, although the NYPSC established restrictions on the use of EELs intended to ensure that they are used "to transmit primarily local exchange traffic," it established a test that can be satisfied as a practical and administrative matter. Order Denying Rehearing and Clarifying Primarily Local Traffic Standard (Issued and Effective August 10, 1999) (the "Primarily Local Traffic Standard Order"), at 11. The NYPSC stated:

In order to qualify for the EEL rate, a rate more favorable than the special access rate, the March 24 Order requires that EELs at and above the DS1 or T-1 level must be used to transmit primarily local exchange traffic. The primarily local standard will consist of a channel count test at the transport and loop level. When some local traffic is carried on 50% or more of DS1 level and above loop channels that are connected to a transport facility, the transport will qualify for EEL rates as will the loops, to the extent loops service customers whose local needs are being satisfied by the EEL circuit. If the primarily local standard for transport is not met, then the EEL rates would apply only to those loops meeting the standard; *i.e.* for loops of DS1 level and above, some local traffic must be carried on 50% of the channels on the loop circuit.

*Id.* Thus defined, the New York local usage definition is simple and implementable. It requires some local traffic on 50% or more of DS1 loop channels, but it does not require the CLEC or the customer to measure the

quantity of such usage. This test can be satisfied in many cases because carriers such as AT&T do not segregate T1.5 channels. Hence, if the customer is purchasing local service from AT&T on this circuit, all of the channels will have some local traffic.

Therefore, if the Department establishes a similar “safe harbor” test that permits CLECs to purchase UNEs to offer business services that compete with Verizon’s business services, if the Department implements transition mechanisms for converting existing special access to UNEs and if the Department prevents Verizon from applying its “no facilities no build” policy to further prevent UNE use, all of Verizon’s business services would be contestable.